

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

VOTE SOLAR, MICHAEL EISENFELD,  
JAMES NEIDHART, JEFFREY  
NEIDHART, STEVEN BAIR, NEIL  
TRIBBETT, JERRY KNUTSON, VICKIE  
SLIKKERVEER, THE COLISEUM, INC.  
(D/B/A THE COLOSSEUM GYM),  
DAVID FOSDECK, STEPHEN ELLISON,  
AND ERIN HOURIHAN,

Plaintiffs,

v.

CITY OF FARMINGTON, NEW  
MEXICO, D/B/A FARMINGTON  
ELECTRIC UTILITY SYSTEM,

Defendant.

CASE NO. 1:19-cv-00753-MIS-CG

**JOINT STATUS REPORT**

Pursuant to the December 7, 2021 Order Extending Stay of Proceedings (“December 7 Order”) issued by the Honorable Carmen E. Garza, Chief United States Magistrate Judge, Plaintiffs Vote Solar, Michael Eisenfeld, James Neidhart, Jeffrey Neidhart, Steven Bair, Neil Tribbett, Jerry Knutson, Vickie Slikkerveer, The Coliseum, Inc., David Fosdeck, Stephen Ellison, and Erin Hourihan (collectively, “Plaintiffs”) and Defendant City of Farmington, New Mexico, d/b/a Farmington Electric Utility System (“Defendant”) (collectively, the “Parties”) submit the following Joint Status Report.

JOINT STATUS REPORT

The December 7 Order provided “that all discovery and case deadlines shall be further stayed until **February 18, 2022.**” In addition, the December 7 Order required the Parties, “on or before **February 18, 2022,** [to] provide a status report indicating whether the stay should be further extended or that these proceedings should move forward.”

The Parties propose the Court further extend the stay of proceedings until May 6, 2022, at which time the Parties request that the Court require that the Parties submit a further status report indicating whether the stay should be further extended or that these proceedings should move forward.

As described in the Parties’ September 9, 2021 and December 6, 2021 Joint Status Reports, Defendant is performing a Cost of Service and Rate Study (“Study”) in anticipation of revision of its retail electric rates. Defendant continues to represent that the outcome of this Study is likely, although not guaranteed, to result in retail electric rates that do not include the Standby Service Riders challenged in Plaintiffs’ Complaint. If that occurs, it may moot or significantly alter the disputes in this case and render discovery and motions related to the Standby Service Riders no longer relevant. It could also reduce the differences between the Parties, making settlement more likely. As such, a stay pending the anticipated change to Defendant’s rates would promote judicial economy by avoiding or reducing discovery and further judicial activity that may become unnecessary. Additionally, continuing the stay of proceedings will allow attention and resources to be given to development and discussion involving the Study rather than to litigation.

Defendant made an initial presentation of a draft rate design to its Public Utility Commission on February 9, 2022. That draft rate design does not include the Standby Service Rider that is in controversy in Plaintiffs' Complaint. The anticipated timeline contemplates concluding a Public Utility Commission and City Council process by the end of April. Continuation and conclusion of the public process will help the Parties decide whether they will request the Court to further extend the stay of proceedings or to lift the stay and direct the resumption of discovery, case deadlines, and associated proceedings.

For the above stated reasons, the Parties further respectfully request that the Court accept this Joint Status Report and extend the stay of proceedings until and including May 6, 2022 and to direct the submission of a further joint status report on or before May 6, 2022.

DATED: February 16, 2022

APPROVED

David C. Bender  
For Plaintiff

Sean M. Neal  
For Defendant (*pro hac vice*)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 16th day of February, 2022, the foregoing *Joint Status Report* was electronically filed with the Clerk of Court using the CM/ECF system that will send notification of such filing to all counsel of record.

By: /s/ Sean M. Neal

SEAN M. NEAL  
(*pro hac vice*)  
Duncan, Weinberg, Genzer & Pembroke, P.C.  
915 L Street  
Suite 1410  
Sacramento, CA 95814  
Telephone: 916-498-0121  
Facsimile: 916-498-9975  
[smn@dwgp.com](mailto:smn@dwgp.com)